

114TH CONGRESS
2D SESSION

S. 3484

To establish an advisory committee to issue nonbinding governmentwide guidelines on making public information available on the Internet, to require publicly available Government information held by the executive branch to be made available on the Internet, to express the sense of Congress that publicly available information held by the legislative and judicial branches should be available on the Internet, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2016

Mr. TESTER introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish an advisory committee to issue nonbinding governmentwide guidelines on making public information available on the Internet, to require publicly available Government information held by the executive branch to be made available on the Internet, to express the sense of Congress that publicly available information held by the legislative and judicial branches should be available on the Internet, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Public Online Informa-
3 tion Act of 2016”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Definitions.
Sec. 4. Purposes.
Sec. 5. Findings of Congress.
Sec. 6. Establishment of Public Online Information Advisory Committee.
Sec. 7. Executive branch Internet publication mandate.
Sec. 8. Legislative and judicial information.
Sec. 9. Government Publishing Office.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) AGENCY.—The term “agency” means an
9 Executive agency or an independent regulatory agen-
10 cy.

11 (2) EXECUTIVE AGENCY.—The term “Executive
12 agency” means—

13 (A) an Executive department, as defined in
14 section 101 of title 5, United States Code;

15 (B) a military department, as defined in
16 section 102 of such title;

17 (C) a Government corporation, as defined
18 in section 103 of such title; or

19 (D) any other establishment in the execu-
20 tive branch of the Government (including the

1 Executive Office of the President), other than
 2 an independent regulatory agency.

3 (3) INDEPENDENT REGULATORY AGENCY.—The
 4 term “independent regulatory agency” has the
 5 meaning given the term “independent establish-
 6 ment” in section 104 of title 5, United States Code.

7 (4) RECORD.—The term “record” has the
 8 meaning given the term “records” in section 3301 of
 9 title 44, United States Code.

10 (5) PUBLIC RECORD.—The term “public
 11 record” means any record, regardless of form or for-
 12 mat, that an agency discloses, publishes, dissemi-
 13 nates, or makes available to the public.

14 (6) E-GOVERNMENT ADMINISTRATOR.—The
 15 term “E-Government Administrator” means the Ad-
 16 ministrator of the Office of Electronic Government
 17 established under section 3602 of title 44, United
 18 States Code.

19 **SEC. 4. PURPOSES.**

20 The purposes of this Act are—

21 (1) to establish an advisory committee to issue
 22 nonbinding guidelines for all three branches of Gov-
 23 ernment regarding making public information avail-
 24 able on the Internet, with sufficient flexibility to
 25 adapt to changes in technology;

1 (2) to empower the E-Government Adminis-
2 trator to establish binding rules concerning making
3 publicly available Government information held by
4 Executive agencies to be made available on the
5 Internet, and to empower independent regulatory
6 agencies to do the same;

7 (3) to express the sense of Congress that pub-
8 licly available information held by the legislative and
9 judicial branches should be available on the Internet;
10 and

11 (4) to encourage the Government Publishing
12 Office to make all of its publications available on the
13 Internet in the formats most useful to the public,
14 after having considered the formats identified by the
15 Public Online Information Advisory Committee.

16 **SEC. 5. FINDINGS.**

17 Congress finds the following:

18 (1) The Federal Government holds a vast re-
19 pository of public information. Throughout the Na-
20 tion's history, the Government has attempted to
21 make that information available to the public,
22 whether through the United States Postal Service,
23 the Federal Depository Library Program, the Presi-
24 dential Library System, Agency Reading Rooms,
25 under the Freedom of Information Act, or by other

1 means. Providing this information to the general
2 public is a public good: Informed citizens are in-
3 formed voters. However, even with these efforts,
4 Government information is too often hard to find,
5 difficult to understand, expensive to obtain in useful
6 formats, and available in only a few locations.

7 (2) The advent of the Internet presents the op-
8 portunity for the Government to make information
9 readily available to many more Americans. The
10 Internet is ubiquitous, turning every computer into
11 a portal to the world's largest library. The Govern-
12 ment has made some efforts to take advantage of
13 this new medium. As the public moves online, the
14 Government must do so as well.

15 (3) In addition to the traditional means of dis-
16 seminating public information, the Federal Govern-
17 ment should make all of its public information avail-
18 able on the Internet. It should do so in ways that
19 take advantage of modern technology, that antici-
20 pate the public's needs, and that provide access to
21 the greatest number of people. The Government
22 should strive to make its information available on
23 the Internet in real-time and in machine processable
24 formats.

1 (4) The creation of this vast new information li-
2 brary will empower citizens to gain a better under-
3 standing of how their Government functions and
4 what it does in their name. It will also give
5 innovators new tools to build on this information
6 and provide better goods and services to the Amer-
7 ican people. Government services will be provided
8 more efficiently, saving the taxpayers money and al-
9 lowing them to be more involved in the lives of their
10 communities.

11 (5) Accomplishing these goals requires signifi-
12 cant coordination. It also requires the creation of
13 new authorities and responsibilities within the Gov-
14 ernment, and the identification of appropriate tech-
15 nology standards.

16 **SEC. 6. ESTABLISHMENT OF PUBLIC ONLINE INFORMATION**
17 **ADVISORY COMMITTEE.**

18 (a) **ESTABLISHMENT.**—There is hereby established
19 an advisory committee to be known as the “Public Online
20 Information Advisory Committee” (in this Act referred to
21 as the “Advisory Committee”).

22 (b) **PURPOSES.**—The purposes of the Advisory Com-
23 mittee are—

24 (1) to coordinate and encourage the Govern-
25 ment’s efforts to make Government information

1 from all three branches of Government available on
2 the Internet; and

3 (2) to issue nonbinding guidelines on how the
4 Government should make public information avail-
5 able on the Internet, and update those guidelines as
6 appropriate.

7 (c) MEMBERSHIP.—

8 (1) IN GENERAL.—The Advisory Committee
9 shall be composed of 19 members (including the
10 Chair), as follows:

11 (A) Six members shall be appointed by the
12 E-Government Administrator.

13 (B) Six members shall be appointed by the
14 Director of the Administrative Office of the
15 Courts.

16 (C) Three members shall be appointed by
17 the Chairman, in consultation with the Ranking
18 Member, of the Committee on Homeland Secu-
19 rity and Governmental Affairs of the Senate.

20 (D) Three members shall be appointed by
21 the Chair, in consultation with the Ranking
22 Member, of the Committee on Oversight and
23 Government Reform of the House of Represent-
24 atives.

(E) The Chair shall be appointed by the Administrator of General Services, after conferring with the E-Government Administrator, the Director of the Administrative Office of the Courts, the Chairman of the Committee on Homeland Security and Governmental Affairs of the Senate, and the Chair of the Committee on Oversight and Government Reform of the House of Representatives.

(2) VICE CHAIR.—A Vice Chair shall be selected from among the members of the Advisory Committee by the Chair.

(3) LIMITATION ON GOVERNMENT EMPLOYEE MEMBERS.—Not more than 6 members of the Advisory Committee may be Government employees.

(4) TERMS OF OFFICE.—Each member of the Advisory Committee shall be appointed for a renewable term of 5 years, except that one-third of the members initially appointed shall be appointed for a 3-year term, one-third of such members shall be appointed for a 4-year term, and one-third of such members and the Chair shall be appointed for a 5-year term.

(5) INITIAL APPOINTMENTS.—The initial appointments of members of the Advisory Committee

1 shall be made not later than 90 days after the date
2 of enactment of this Act.

3 (6) MEETINGS.—The Advisory Committee shall
4 meet not fewer than 6 times per year.

5 (d) POWERS OF ADVISORY COMMITTEE.—

6 (1) IN GENERAL.—From time to time, the Ad-
7 visory Committee shall examine its legislative char-
8 ter, structure, and funding, and shall make rec-
9 ommendations to Congress, the President, and the
10 Courts regarding how the Advisory Committee could
11 be restructured to better accomplish the mission of
12 making Government information available to the
13 public on the Internet. The recommendations shall
14 be published in print and on the Internet.

15 (2) SPECIFIC POWERS.—To carry out the pur-
16 poses of the Advisory Committee, the Advisory Com-
17 mittee may—

18 (A) hold hearings;

19 (B) issue recommendations to Congress;

20 (C) issue recommendations to agencies;

21 (D) issue reports, guidelines, and memo-
22 randa;

23 (E) articulate guidelines on how the Gov-
24 ernment should make public records available
25 on the Internet, update those guidelines as ap-

1 appropriate, and inquire into Government compli-
2 ance with those guidelines;

3 (F) hold or host conferences and symposia;

4 (G) enter into cooperative agreements with
5 outside experts to obtain relevant advice or ex-
6 pertise, and oversee staff;

7 (H) establish subcommittees; and

8 (I) establish rules of procedure.

9 (3) RELATIONSHIP TO FACCA.—The Advisory
10 Committee shall not be subject to the control of any
11 Advisory Committee Management Officer designated
12 under section 8(b)(1) of the Federal Advisory Com-
13 mittee Act (5 U.S.C. App.).

14 (e) OPERATIONS.—

15 (1) OPEN GOVERNMENT PROCEDURES.—In ad-
16 dition to the rules in the Federal Advisory Com-
17 mittee Act (5 U.S.C. App.), in the interest of im-
18 proving transparency, the Advisory Committee shall
19 adhere to the following rules that supplement and
20 modify such Act (in accordance with section 4(a) of
21 such Act):

22 (A) Subcommittees shall have the same du-
23 ties and obligations as the full committee as de-
24 lineated under sections 10 through 13 of such

1 Act. Subcommittees shall similarly be bound by
2 the terms of this section.

3 (B) All information made available on the
4 Internet shall be done so by state-of-the-art
5 methods.

6 (C) Information required to be made avail-
7 able on the Internet shall be done so in a timely
8 fashion.

9 (D) Notice of all meetings shall be avail-
10 able on the website of the Advisory Committee's
11 website, with agendas available on the Internet
12 not less than 3 days prior to any meeting.

13 (E) All records available for public copying
14 under section 10 of such Act shall be made
15 available on the website of the Advisory Com-
16 mittee.

17 (F) The Advisory Committee shall make
18 available on the Internet and to any person, at
19 no cost, transcripts of Advisory Committee pro-
20 ceedings.

21 (G) Videos recordings of proceedings shall
22 be made available on the Internet.

23 (H) Documents submitted to the Advisory
24 Committee shall be made publicly available un-
25 less the Advisory Committee determines that

1 those materials would disclose matters de-
2 scribed in section 552(b) of title 5, United
3 States Code (commonly known as the “Freedom
4 of Information Act”).

5 (I) The Advisory Committee shall make
6 publicly available the names and brief biog-
7 raphies of the members of the Advisory Com-
8 mittee.

9 (J) All members of the Advisory Com-
10 mittee shall file financial disclosure forms,
11 which shall be made available on the Advisory
12 Committee website after redactions to remove
13 personally identifiable information, such as so-
14 cial security numbers.

15 (K) All members of the Advisory Com-
16 mittee shall have to state and publicly disclose
17 conflicts of interest. These statements must be
18 updated whenever new conflicts arise or on an
19 annual basis, whichever is more frequent. These
20 disclosures shall be placed on the Internet.

21 (2) SUPPORT SERVICES.—The General Services
22 Administration shall be responsible for providing all
23 support services to the Advisory Committee, includ-
24 ing quarters and staff, and for requesting funds
25 from Congress on behalf of the Advisory Committee.

1 Nothing in this section shall prevent the Advisory
 2 Committee from communicating with Congress di-
 3 rectly regarding funding or other matters.

4 (3) DURATION.—The Advisory Committee is a
 5 continuing body and is not subject to termination as
 6 provided in section 14 of the Federal Advisory Com-
 7 mittee Act (5 U.S.C. App.).

8 (4) APPLICATION OF FACA.—Except as other-
 9 wise provided in this section, the Federal Advisory
 10 Committee Act (5 U.S.C. App.) shall apply to the
 11 Advisory Committee.

12 (f) REPORTS.—The Advisory Committee shall issue
 13 a report on the activities of the Advisory Committee every
 14 2 years, or as appropriate, whichever is more frequent.

15 (g) AUTHORIZATION.—There is authorized to be ap-
 16 propriated to the General Services Administration such
 17 sums as may be necessary for the operations of the Advi-
 18 sory Committee.

19 **SEC. 7. EXECUTIVE BRANCH INTERNET PUBLICATION MAN-**
 20 **DATE.**

21 (a) ONLINE PUBLICATION REQUIREMENTS.—

22 (1) FREE AVAILABILITY.—

23 (A) IN GENERAL.—Except as provided in
 24 subparagraph (B), the Government shall make
 25 public records available on the Internet at no

1 charge (including a charge for recovery of
2 costs) to the public.

3 (B) EXCEPTION.—Subparagraph (A) shall
4 not apply in the case of a charge imposed by
5 Federal law before the date of enactment of
6 this Act.

7 (2) PERMANENCE.—Public records shall be per-
8 manently available on the Internet.

9 (3) CURRENT TECHNOLOGY.—Current informa-
10 tion technology capabilities shall be applied to the
11 means by which records are made available on the
12 Internet, and the formats in which they are avail-
13 able.

14 (4) SEARCHABLE LIST.—Each agency shall
15 publish on the Internet a comprehensive, searchable,
16 machine processable list of all records it makes pub-
17 licly available. With respect to those records, the list
18 shall include at least the following information:

19 (A) Where the records can be found.

20 (B) Whether the records are available to
21 the public at no cost or for a fee (and the
22 amount of the fee, if applicable).

23 (C) Brief descriptions of the records.

24 (b) RULEMAKING AUTHORITY.—

1 (1) IN GENERAL.—Nothing in the grant of au-
2 thority in this subsection shall be construed to limit
3 the obligation of the Government to make records
4 publicly available as required by law.

5 (2) EXECUTIVE AGENCIES.—

6 (A) The Director of the Office of Manage-
7 ment and Budget shall delegate to the E-Gov-
8 ernment Administrator the authority to admin-
9 ister all functions under this section, except
10 that any such delegation shall not relieve the
11 Director of responsibility for the administration
12 of such functions.

13 (B) The E-Government Administrator,
14 after consulting with the Office of Information
15 and Regulatory Policy, shall promulgate such
16 regulations as are necessary to ensure that all
17 public records held by Executive agencies are
18 available on the Internet in the formats and by
19 the means the E-Government Administrator
20 designates. In promulgating the regulations, the
21 E-Government Administrator shall consider the
22 guidelines issued by the Public Online Informa-
23 tion Advisory Committee.

1 (C) In the regulations promulgated under
2 subparagraph (B), the E-Government Adminis-
3 trator shall include—

4 (i) rules on how Executive agencies
5 shall publish records on the Internet, in-
6 cluding the format and timeframe; and

7 (ii) procedures through which Execu-
8 tive agencies may object to placing public
9 records on the Internet, in accordance with
10 the exceptions under paragraph (4), and a
11 method by which the objections can be re-
12 viewed.

13 (D) The regulations promulgated under
14 subparagraph (B) shall not preclude Executive
15 agencies from making additional records avail-
16 able on the Internet beyond those required by
17 the regulations, or in additional formats beyond
18 those required by the regulations, or on a more
19 rapid timeframe than required by the regula-
20 tions. In addition, each Executive agency head
21 shall designate a person within the agency re-
22 sponsible for Internet publication of public
23 records.

24 (E) The Director of the Office of Manage-
25 ment and Budget shall ensure that the E-Gov-

1 ernment Administrator has adequate staff and
2 resources to properly fulfill all the Administra-
3 tor's functions under this Act.

4 (3) INDEPENDENT REGULATORY AGENCIES.—

5 (A) A Chief Information Officer of an
6 independent regulatory agency (hereafter in this
7 section referred to as a “CIO”) or an official
8 designated by the head of an independent regu-
9 latory agency shall promulgate such regulations
10 as are necessary to ensure that public records
11 are available on the Internet in the formats and
12 by the means the CIO designates. In promul-
13 gating the regulations, the CIO or other official
14 shall consider the guidelines issued by the Pub-
15 lic Online Information Advisory Committee, as
16 well as regulations promulgated by the E-Gov-
17 ernment Administrator under paragraph (1).

18 (B) The regulations promulgated under
19 subparagraph (A) shall not preclude the heads
20 of offices within an independent regulatory
21 agency from making additional records available
22 on the Internet beyond those required by the
23 regulations, or in additional formats beyond
24 those required by the regulations, or on a more

1 rapid timeframe than required by the regula-
2 tions.

3 (C) The head of the independent regula-
4 tory agency shall ensure that the CIO or the
5 official designated by the head of the inde-
6 pendent regulatory agency has adequate staff
7 and resources to properly fulfill all of the func-
8 tions of the CIO under this Act.

9 (4) EXCEPTIONS.—

10 (A) IN GENERAL.—The regulations pro-
11 mulgated under this subsection may contain ex-
12 ceptions, in accordance with this paragraph, to
13 the requirement that all public records be made
14 available on the Internet.

15 (B) SCOPE OF EXCEPTIONS.—The excep-
16 tions may be no broader than the exceptions
17 recognized under section 552 of title 5, United
18 States Code (commonly known as the “Freedom
19 of Information Act”).

20 (C) ADDITIONAL EXCEPTIONS BY RE-
21 QUEST.—In addition to the exceptions provided
22 under subparagraph (B), the regulations shall
23 provide for the E-Government Administrator or,
24 in the case of an independent regulatory agen-
25 cy, the CIO or official designated by the head

1 of the agency, to grant narrow case-by-case ex-
2 ceptions to the Internet publication requirement
3 if an agency requests an exception and the
4 agency demonstrates that—

5 (i) there is a clear and convincing rea-
6 son for the record to not be made available
7 on the Internet; and

8 (ii) on balance, the harm caused by
9 disclosure significantly outweighs the
10 public's interest in having the record avail-
11 able on the Internet.

12 (D) AVAILABILITY OF SEGREGABLE POR-
13 TIONS.—If the E-Government Administrator,
14 CIO, or official designated by the head of an
15 independent regulatory agency approves a re-
16 quest for an exception with respect to a public
17 record under subparagraph (C), any reasonably
18 segregable portion of the public record shall be
19 made available on the Internet in a timely fash-
20 ion after deletion of the portions that are sub-
21 ject to the exception. The amount of informa-
22 tion deleted shall be indicated on the portion of
23 the record that is made available on the Inter-
24 net, unless including that indication would sig-
25 nificantly harm the interest protected by the ex-

1 ception. If technically feasible, the amount of
2 the information deleted shall be indicated at the
3 place in the record where such deletion is made.

4 (E) DISCLOSURE OF WITHHELD
5 RECORDS.—The E-Government Administrator,
6 CIO, or official designated by the head of an
7 independent regulatory agency shall maintain a
8 list of records not made available on the Inter-
9 net by reason of an exception under subpara-
10 graph (C) and publish such list on the Internet,
11 excluding any records the identification of
12 which would significantly harm the interest pro-
13 tected by the exception.

14 (5) PUBLICATION.—Regulations promulgated
15 under this subsection shall be published in the Fed-
16 eral Register and on the relevant agency website.

17 (6) APPLICABILITY.—Regulations promulgated
18 under this subsection shall apply only to public
19 records generated, updated, or released after the
20 date of enactment of this Act.

21 (7) EFFECTIVE DATE.—Regulations promul-
22 gated under this subsection shall take effect no
23 sooner than 3 years after the date of enactment of
24 this Act.

1 (c) REPORTS TO CONGRESS.—At least once every 4
2 years, the E-Government Administrator and each inde-
3 pendent regulatory agency CIO shall review the exceptions
4 provided under subsection (b)(4) to making public records
5 available on the Internet and, if warranted, make rec-
6 ommendations to the President and to Congress regarding
7 whether Federal law should be changed. The report shall
8 be made publicly available, including being published on
9 the Internet.

10 (d) INSPECTOR GENERAL REVIEWS.—The Inspector
11 General of each agency shall conduct periodic reviews re-
12 garding agency compliance with Internet publication re-
13 quirements, not less often than once every 4 years. The
14 reviews shall be published on the Internet.

15 (e) ENFORCEMENT OF PUBLIC ACCESS BY PRIVATE
16 INDIVIDUALS OR ORGANIZATIONS.—

17 (1) REQUESTS.—Private individuals or organi-
18 zations may request that an Executive agency place
19 public records on the Internet, including the com-
20 prehensive searchable list of publicly available
21 records referred to in subsection (a)(4), in accord-
22 ance with Federal regulations. An agency has 30
23 days to respond to the request in writing or to place
24 the record on the Internet. If an agency denies the

1 request in whole or in part, the private individual or
2 organization may file a complaint in Federal court.

3 (2) JURISDICTION.—(A) On complaint, the dis-
4 trict court of the United States in the district in
5 which the complainant resides, or has his principal
6 place of business, or in which the agency records are
7 situated, or in the District of Columbia, has jurisdic-
8 tion to enjoin the agency from refusing to publish
9 agency records on the Internet, or refusing to pub-
10 lish it in an appropriate format, and to order the
11 Internet online publication of any agency records im-
12 properly withheld. In such a case the court shall de-
13 termine the matter de novo, and may examine the
14 contents of such agency records in camera to deter-
15 mine whether such records or any part thereof shall
16 be withheld under any of the exceptions provided
17 under subsection (b)(4), and the burden is on the
18 agency to sustain its action.

19 (B) Notwithstanding any other provision of law,
20 the defendant shall serve an answer or otherwise
21 plead to any complaint made under this subsection
22 within 30 days after service upon the defendant of
23 the pleading in which such complaint is made, unless
24 the court otherwise directs for good cause shown.

1 (3) ATTORNEY FEES.—The court may assess
2 against the United States reasonable attorney fees
3 and other litigation costs reasonably incurred in any
4 case under this subsection in which the complainant
5 has substantially prevailed.

6 (4) SPECIAL COUNSEL.—Whenever the court
7 orders the production of any agency records improperly
8 withheld from the complainant and assesses
9 against the United States reasonable attorney fees,
10 litigation costs, and interest, and the court additionally
11 issues a written finding that the circumstances
12 surrounding the withholding raise questions whether
13 agency personnel acted arbitrarily or capriciously
14 with respect to the withholding, a Special Counsel
15 shall promptly initiate a proceeding to determine
16 whether disciplinary action is warranted against the
17 officer or employee who was primarily responsible
18 for the withholding. A Special Counsel, after investigation
19 and consideration of the evidence submitted,
20 shall submit his findings and recommendations to
21 the administrative authority of the agency concerned
22 and shall send copies of the findings and recommendations
23 to the officer or employee or his representative.
24 The administrative authority shall take

1 the corrective action that the Special Counsel rec-
2 ommends.

3 (5) CONTEMPT.—In the event of noncompliance
4 with the order of the court, the district court may
5 punish for contempt the responsible employee, and
6 in the case of a uniformed service, the responsible
7 member.

8 **SEC. 8. LEGISLATIVE AND JUDICIAL INFORMATION.**

9 It is the sense of Congress that judicial and legislative
10 agencies (within the meaning of section 3701 of title 31,
11 United States Code) should adopt or adapt the rec-
12 ommendations of the Advisory Committee for their own
13 use. In addition, judicial and legislative agencies are en-
14 couraged to consider the guidelines issued by the Public
15 Online Information Advisory Committee and the regula-
16 tions promulgated by the E-Government Administrator.

17 **SEC. 9. GOVERNMENT PUBLISHING OFFICE.**

18 It is the sense of Congress that the Government Pub-
19 lishing Office should make all of its publications perma-
20 nently available on the Internet in a multiplicity of for-
21 mats that best meet the needs of the public. In doing so,
22 the Government Publishing Office is strongly encouraged
23 to consider the recommendations of the Public Online In-

- 1 formation Advisory Committee and the E-Government Ad-
- 2 ministrator.

